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Attorneys for Western Resource Advocates

**BEFORE THE ARIZONA CORPORATION COMMISSION**

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

IN THE MATTER OF ARIZONA PUBLIC  
SERVICE COMPANY REQUEST FOR  
APPROVAL OF UPDATED GREEN POWER  
RATE SCHEDULE GPS-1, GPS-2, AND GPS-3.

Docket No. E-01345A-10-0394

IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR  
APPROVAL OF ITS 2013 RENEWABLE  
ENERGY STANDARD IMPLEMENTATION FOR  
RESET OF RENEWABLE ENERGY ADJUSTOR.

Docket No. E-01345A-12-0290

IN THE MATTER OF THE APPLICATION OF  
TUCSON ELECTRIC POWER COMPANY FOR  
APPROVAL OF ITS 2013 RENEWABLE  
ENERGY STANDARD IMPLEMENTATION PLAN  
AND DISTRIBUTED ENERGY  
ADMINISTRATIVE PLAN AND REQUEST FOR  
RESET OF RENEWABLE ENERGY ADJUSTOR.

Docket No. E-01933A-12-0296

IN THE MATTER OF THE APPLICATION OF  
UNS ELECTRIC, INC. FOR APPROVAL OF ITS  
2013 RENEWABLE ENERGY STANDARD  
IMPLEMENTATION PLAN AND DISTRIBUTED  
ENERGY ADMINISTRATIVE PLAN AND  
REQUEST FOR RESET OF RENEWABLE  
ENERGY ADJUSTOR.

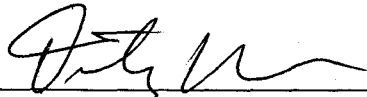
Docket No. E-04204A-12-0297

**NOTICE OF FILING SURREBUTTAL  
TESTIMONY OF DAVID BERRY ON  
BEHALF OF WESTERN RESOURCE  
ADVOCATES**

1 Western Resource Advocates ("WRA"), through its undersigned counsel, hereby  
2 provides notice that it has this day filed the surrebuttal testimony of David Berry in this matter.  
3

4 DATED this 22<sup>nd</sup> day of May, 2013

5 ARIZONA CENTER FOR LAW IN  
6 THE PUBLIC INTEREST

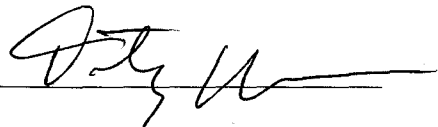
7 By   
8 Timothy M. Hogan  
9 202 E. McDowell Rd., Suite 153  
10 Phoenix, Arizona 85004  
11 Attorneys for Western Resource Advocates

12 ORIGINAL and 13 COPIES of  
13 the foregoing filed this 22<sup>nd</sup> day  
14 of May, 2013, with:

15 Docketing Supervisor  
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19 Phoenix, AZ 85007

20 COPIES of the foregoing  
21 Electronically mailed this  
22 22<sup>nd</sup> day of May, 2013, to:

23 All Parties of Record  
24  
25



**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

**BOB STUMP, *Chairman***

**GARY PIERCE**

**BRENDA BURNS**

**BOB BURNS**

**SUSAN BITTER SMITH**

IN THE MATTER OF ARIZONA PUBLIC SERVICE  
COMPANY REQUEST FOR APPROVAL OF  
UPDATED GREEN POWER RATE SCHEDULE  
GPS-1, GPS-2, AND GPS-3.

DOCKET NO. E-01345A-10-0394

IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR  
APPROVAL OF ITS 2013 RENEWABLE ENERGY  
STANDARD IMPLEMENTATION FOR RESET  
OF RENEWABLE ENERGY ADJUSTOR.

DOCKET NO. E-01345A-12-0290

IN THE MATTER OF THE APPLICATION OF  
TUCSON ELECTRIC POWER COMPANY FOR  
APPROVAL OF ITS 2013 RENEWABLE ENERGY  
STANDARD IMPLEMENTATION PLAN AND  
DISTRIBUTED ENERGY ADMINISTRATIVE  
PLAN AND REQUEST FOR RESET OF ITS  
RENEWABLE ENERGY ADJUSTOR.

DOCKET NO. E-01933A-12-0296

IN THE MATTER OF THE APPLICATION OF  
UNS ELECTRIC, INC., FOR APPROVAL OF ITS  
2013 RENEWABLE ENERGY STANDARD  
IMPLEMENTATION PLAN AND DISTRIBUTED  
ENERGY ADMINISTRATIVE PLAN AND  
REQUEST FOR RESET OF ITS RENEWABLE  
ENERGY ADJUSTOR.

DOCKET NO. E-04204A-12-0297

**Surrebuttal Testimony of  
David Berry  
Western Resource Advocates  
May 22, 2013**

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**Surrebuttal Testimony of David Berry**

Docket Nos. E-01345A-10-0394, E-01345A-12-0290, E-01933A-12-0296,  
and E-04204A-12-0297

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1 Introduction

2  
3 Q. Please state your name.

4  
5 A. My name is David Berry.

6  
7 Q. Did you previously file testimony in this matter?

8  
9 A. Yes, on behalf of Western Resource Advocates (WRA).

10  
11 Q. What is the purpose of your surrebuttal testimony?

12  
13 A. I address: a) the central issues in this docket, b) controlling cost exposure when utilities  
14 purchase renewable energy credits or certificates (RECs), c) protecting the value of RECs,  
15 and d) RUCO's proposed temporary 50/50 split of RECs.

16  
17 The Central Issues in This Docket

18  
19 Q. What are the central issues facing the Commission in this proceeding?

20  
21 A. While there are numerous disagreements among the parties (some of which are discussed  
22 below), the central issues before the Commission are:

- 23  
24 a) minimizing the utilities' costs of fostering distributed renewable energy,  
25 b) encouraging early adoption of distributed renewable energy and innovation in  
26 distributed renewable energy markets, thereby introducing a modest amount of  
27 competition into the electricity market through distributed renewable energy, and  
28 c) protecting the value of RECs from actions which devalue those RECs.

29  
30 Currently, direct incentives for distributed renewable energy are at or close to zero **but the**  
31 **role of incentives in the future depends on whether and how the Commission modifies**  
32 **net metering practices and changes rate designs.** These changes will play out over time  
33 and cannot be accurately projected or permanently settled today. **The Commission should**  
34 **not box itself in by eliminating the distributed renewable energy requirement at this time**  
35 **as proposed by the utilities and should not destroy the value of RECs as proposed by Staff.**

36  
37 Q. Staff says that getting more information as proposed by WRA would cause an unnecessary  
38 delay in resolving the issue of how to implement the distributed renewable energy  
39 requirement when incentives are no longer needed (Staff rebuttal, page 2, starting on line  
40 20). Does WRA's proposal cause an unnecessary delay?

41  
42 A. No. First of all, Staff's proposed Track and Monitor approach devalues customers' RECs and  
43 should not be implemented at all. Second, the utilities' proposal to eliminate the  
44 distributed energy requirement is premature. The Commission's consideration of

eliminating the distributed energy requirement should take into account decisions on net metering and rate design changes that it has not yet made. Depending on those future changes, retention of the distributed renewable energy requirement and a REC acquisition method may be necessary. A "delay" in accepting the utilities' proposal is, therefore, quite appropriate. A temporary waiver of the distributed energy requirement until net metering issues have been resolved and a REC acquisition method is adopted is also appropriate. During the waiver period, the utilities could report kWh of energy produced by distributed renewable energy projects to the Commission for informational purposes; because there would be no distributed renewable energy requirement in effect, there would be no conflict over ownership of RECs.

Q. Have other parties expressed similar concerns about a hasty resolution of the role of RECs, the distributed renewable energy requirement, and incentives for distributed renewable energy?

A. Yes. SEIA's and Vote Solar's direct testimony recognize the multiple factors and processes that affect the development of a just and reasonable resolution. Also, RUCO recognizes the many moving parts that must be considered (RUCO rebuttal, p. 6). RUCO states that "finding a solution in an ever changing market presents a unique challenge" (rebuttal, p. 6, lines 7-8), that it is necessary to "give the process time" (rebuttal, p. 6, line 11), and that "the current system of REC transfer and viability of potential policies solutions ... could be greatly impacted by the end result of the technical conference (on net metering) and subsequent Commission decision" (rebuttal, p. 6, lines 17-20).

#### **Controlling Costs When Utilities Purchase RECs**

Q. Staff is concerned that using an auction type of approach to obtain RECs would lead to uncertain costs of meeting the requirements of the Renewable Energy Standard because the winning bid prices are uncertain (rebuttal p. 7, starting on line 25). What is the major cause of this uncertainty?

A. The major cause is uncertainty about future Commission actions regarding net metering practices and rate design changes. Potential changes to net metering practices and to rate designs increase the risk to the customer contemplating an investment in distributed renewable energy. Today, because the cost of distributed solar energy and retail electric rates are about the same for many customers, incentives are not needed in many cases and REC prices in Arizona are therefore likely to be low.<sup>1</sup> However, changes or potential changes in net metering practices or rate designs could very well increase the need for direct incentives to encourage distributed renewable energy, resulting in increased REC prices.

---

<sup>1</sup> In general, the price of a REC is the difference between the cost of electricity generated with renewable energy and the cost of conventionally generated electricity. See my direct testimony, page 4, starting on line 32.

1 Q. Staff is also concerned that the Commission would have no direct control over the level of  
2 incentives if an auction process were used (Staff rebuttal, p. 7, lines 13-14; p. 9, lines 9-10).  
3 How can the Commission exercise control over the budget?  
4

5 A. The Commission could establish an annual budget in its regular review of implementation  
6 plans, based upon information provided by stakeholders, upon proposed budgets  
7 developed by the utilities, and upon prior years' experience with REC prices. As an  
8 alternative to an auction, WRA also proposed a technical conference approach to determine  
9 whether incentives would be needed. If incentives are needed, they could be set  
10 administratively or via an auction. In either the auction approach or the administrative  
11 approach, the Commission could establish an annual budget for incentives in its regular  
12 review of implementation plans.  
13

14 Q. Could utilities include a "standard offer" bid price in soliciting bids in order to better  
15 estimate the budget for an auction process?  
16

17 A. Yes.  
18

19 Q. Staff indicates that sellers of RECs in an auction process would be able to manipulate the  
20 market and force up REC prices (Staff rebuttal, p. 8, lines 16-24). Is this a serious issue?  
21

22 A. Not if the utilities adopt a well-designed auction process, based upon their previous  
23 experience with bidding processes and experience in other states with auctions. Results of  
24 the auctions should be made public, audited by or for Staff, and reviewed by the  
25 Commission. Further, Arizona experience demonstrates a strong interest in distributed  
26 generation by customers. Thus, market manipulation would require thousands of  
27 customers to strategize in a coordinated manner to hold up the utilities. It is more likely  
28 that the customers and their contractors would compete with each other to offer as low a  
29 bid as they would need to proceed with their projects.<sup>2</sup> Losing bidders get no incentive.  
30

### 31 Protecting the Value of Renewable Energy Credits (RECs) 32

33 Q. Did Staff address the devaluation of RECs due to double counting inherent in its Track and  
34 Monitor proposal in either its direct testimony or rebuttal?  
35

36 A. No. The devaluation problem remains a major shortcoming in Staff's recommendations as  
37 explained in my rebuttal testimony. Also, for the same reasons as explained in my rebuttal  
38 testimony, customers would not be able sell their RECs under a track and monitor approach  
39 despite TEP's and UNS's opinion to the contrary (TEP & UNS rebuttal page 3, starting at line  
40 13).  
41

---

<sup>2</sup> To further dilute the market power of REC sellers, utilities could accept bids only from individual project owners and not from REC aggregators.

1 Q. Wal-Mart's rebuttal testimony (page 3, starting at line 10 and page 3, starting at line 17)  
2 references WRA's direct testimony and indicates that: a) if a utility were granted a  
3 temporary waiver from the distributed energy requirement there would be no obligation  
4 for it to comply with, and b) the information provided to the Commission on kWh of energy  
5 produced by distributed renewable energy facilities would be for informational purposes  
6 and not for satisfying any type of compliance obligation. Wal-Mart concludes that "contrary  
7 to the suggestion of some other parties, it appears that kWhs reported to the Commission,  
8 but not claimed to be satisfying a utility's RES DE requirement (because that requirement  
9 was waived for a given year), or any other portion of the utility's RES requirements, would  
10 not result in double counting ..." (p. 5, lines 8-12). Do you agree with Wal-Mart on this  
11 point?  
12

13 A. Yes. Wal-Mart's interpretation is the same as that in my direct testimony (page 10, lines 6  
14 through 19, including footnote 16). There would be no double counting of RECs associated  
15 with projects during the waiver period because there is no regulatory requirement  
16 pertaining to distributed renewable energy in force.  
17

18 Q. Tucson Electric Power Company and UNS Electric, Inc. (TEP & UNS) continue to maintain  
19 that any value of RECs to the Affected Utilities is the result of the legal fiction created under  
20 the Renewable Energy Standard and that renewable energy credits are a means of tracking  
21 compliance (TEP & UNS rebuttal p. 5, lines 13-18). Does TEP & UNS's view constitute a fair  
22 and complete understanding of RECs?  
23

24 A. No. First, renewable energy comes with environmental and other attributes. Property  
25 rights in these attributes are separable from the rights to electric energy (kWh) generated  
26 by renewable resources and are traded in REC markets. "Unbundling" of attributes from an  
27 underlying good or service is not unique to renewable energy. For instance, development  
28 rights can be unbundled from land. Separable development rights underlie such practices  
29 as public purchase of development rights to preserve open space, acquisition of  
30 development rights by land trusts to preserve open space, and use of transferable  
31 development rights to preserve open space.  
32

33 Second, RECs associated with Arizona distributed renewable energy projects (and central  
34 station renewable energy projects) would exist even if there were not a Renewable Energy  
35 Standard in Arizona. Those RECs could be purchased by parties other than Arizona utilities  
36 through voluntary or compliance markets or retained by their owners to demonstrate that  
37 they are meeting their own clean energy goals.  
38

39 Third, A.A.C. R14-2-1803 clarifies the property rights in RECs. Property rights demarcate  
40 ownership of tradable credits and enable a clear transfer of control of the credits. Without  
41 a clear assignment of rights in tradable credits, the Commission and the utility could not be  
42 sure that the portfolio standard was being met. Additionally, without a clear assignment of  
43 rights, owners of renewable generation equipment could not be sure of their ability to  
44 capture the revenues from the production of eligible energy for which they have incurred



1 the costs. Further, buyers of RECs could not be sure that they aren't being swindled if  
2 property rights are not clearly defined and enforceable.

3  
4 Thus, RECs are not a fiction. They are real and exist whether or not TEP & UNS track them or  
5 acquire them. Further, ambiguous property rights and double counting are real economic  
6 problems that are addressed by the Commission's Renewable Energy Standard.

7  
8 **RUCO's Proposed Temporary 50/50 Split of RECs**

9  
10 Q. RUCO proposes splitting RECs 50/50 between the system owner and the utility to  
11 temporarily resolve the issue of REC transfers and payments in the absence of incentives if  
12 the Commission does not act on proposed net metering changes for "some time" (RUCO  
13 rebuttal, starting on p. 7, line 19). How does RUCO envision the 50/50 split would work?

14  
15 A. RUCO views the system owner/investor and the utility as "partners" – one providing the  
16 capital and space to host the system and the other integrating the system into the grid. The  
17 50/50 split of RECs is intended to be a compromise in which the customer would,  
18 apparently, transfer half of his or her RECs to the utility for free. RUCO indicates that  
19 commercial customers needing to retain all their RECs to meet their own goals would not  
20 have to transfer any of their RECs to the utility.

21  
22 Q. Is a 50/50 split a workable approach?

23  
24 A. Probably not – there are too many unanswered questions and too many inappropriate  
25 assumptions. First, system owners and utilities are not partners – they are parties to a  
26 potential transaction, just as a utility and an independent power producer are parties to a  
27 transaction to sell and purchase electricity. The parties have different objectives that may  
28 be met by making a deal. The parties also have the option of not making a deal.

29  
30 Second, there is no "compromise" unless the affected parties agree to it. A "compromise"  
31 cannot be imposed on customers by the Commission or the utilities. In this case, RECs are  
32 initially owned by the owners of the distributed renewable energy systems. RUCO's  
33 proposal requires customers to hand over some of their property (RECs) to a utility without  
34 compensation from the utility in order to obtain electric service. Why should customers  
35 agree to hand over half their RECs to the utility in return for getting interconnection service  
36 they are otherwise currently entitled to as utility customers? How would the utilities know  
37 whether the customers have affirmatively agreed to transfer half their RECs and thus be  
38 able to count the RECs? How could a customer be prevented from seeking compensation  
39 from the utility for the utility's claiming ownership of the customer's RECs?

40  
41 Third, what is the utility going to do with half the RECs? Would the utility have to try to get  
42 customers to install twice as much distributed renewable energy as they otherwise would in  
43 order to obtain sufficient RECs to meet regulatory requirements? How would they do this  
44 without paying for the RECs?

1  
2 **Conclusions**

3  
4 Q. What should the Commission do in this matter?

5  
6 A. Because of the interconnections among the Renewable Energy Standard, the distributed  
7 renewable energy market, net metering policy, and rate design, a rush to change current  
8 practices is counter-productive. In a complex system of interconnected factors, the  
9 Commission cannot do just one thing. A comprehensive approach must be considered.

10  
11 The Commission should reject Staff's Track and Monitor proposal, reject RUCO's 50/50 split  
12 proposal, and hold off on eliminating the distributed renewable energy standard as  
13 proposed by the utilities until there is concrete evidence that the distributed renewable  
14 energy market can stand on its own without incentives, taking into account the effects of  
15 any changes in net metering policy and significant changes in rate designs that affect the  
16 economics of investor decisions regarding distributed renewable energy.

17  
18 For now, the Commission should direct the utilities to either develop and implement an  
19 auction type approach to acquire RECs or conduct a technical conference to obtain more  
20 information. If the technical conference indicates that incentives are still needed because,  
21 for example, the Commission modifies net metering practices, utilities could continue to  
22 obtain RECs for distributed resources by employing the methods they previously used or by  
23 using an auction.

24  
25 Until the auction is set up or the technical conference is concluded (and appropriate  
26 direction given by the Commission on the basis of the technical conference), the  
27 Commission should, temporarily, waive compliance with the distributed renewable energy  
28 requirements.

29  
30 Q. Does this conclude your surrebuttal testimony?

31  
32 A. Yes.